

The Honorable Robert S. Lasnik

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTH COAST ENTERPRISES, INC., a
Washington corporation,

Plaintiff,

v.

ST. PAUL FIRE & MARINE INSURANCE
COMPANY, a Minnesota corporation,

Defendant.

NO. C05-653 RSL

ANSWER AND AFFIRMATIVE DEFENSES TO
FIRST AMENDED COMPLAINT

I. ANSWER

1. Admit.

2. Admit.

3. Admit.

4. Admit.

5. Admit that the court has personal jurisdiction over the parties, but
otherwise deny paragraph 5.

6. Admit venue is proper because defendant resides in this judicial district, but
otherwise deny paragraph 6.

7. Answering the first sentence, St. Paul admits that a policy exists, but
otherwise states that the policy speaks for itself. The second sentence is admitted.

FIRST AMENDED ANSWER (C05-653 RSL) - 1

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1 8. Answering paragraph 8, St. Paul admits that insurance policy IM08401196
2 was issued effective December 29, 2000 to December 29, 2001, and a renewal policy
3 was issued effective December 29, 2001 to December 29, 2002. The remainder of
4 paragraph 8 is denied.

5 9. Paragraph 9 contains legal conclusions requiring no response, and the
6 policy speaks for itself. Alternatively, paragraph 9 is denied.

7 10. Answering paragraph 10, St. Paul admits that North Coast lodged what it
8 purported to be a "claim" with St. Paul, but St. Paul otherwise denies paragraph 10.

9 11. Answering paragraph 11, St. Paul states that the referenced document
10 speaks for itself. Alternatively, paragraph 11 is denied.

11 12. Answering paragraph 12, St. Paul states that the referenced document
12 speaks for itself. Alternatively, paragraph 12 is denied.

13 13. Denied. St. Paul affirmatively alleges that North Coast had a copy of the
14 policy and thus a full disclosure of "all pertinent benefits, coverages or other provisions"
15 in the policy.

16 14. Admit.

17 15. Admit the existence of a letter dated January 12, 2004, which speaks for
18 itself. Otherwise deny.

19 16. Admit the existence of a letter dated January 26, 2004, which speaks for
20 itself. Paragraph 16 is otherwise denied.

21 17. Denied.

22 18. Denied.

23 19. Denied.

24 20. Admit the existence of correspondence dated April 8, 2004, which speaks
25 for itself. Otherwise deny paragraph 20.

26 FIRST AMENDED ANSWER (C05-653 RSL) - 2

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21. Admit information was provided on or about April 22, but otherwise deny paragraph 21.

22. Admit the existence of a proof of loss provided on or about May 26, 2004, which speak for itself. Otherwise deny paragraph 23.

23. Admit the existence of correspondence dated August 5, 2004, which speaks for itself. Otherwise deny paragraph 24.

24. Admit that Examinations Under Oath were taken, but otherwise deny paragraph 24.

25. Admit the existence of correspondence dated December 31, 2004, which speaks for itself. Otherwise deny paragraph 25.

26. This paragraph consists of legal argument that requires no response. Alternatively, it is denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

II. AFFIRMATIVE DEFENSES

1. The policy is subject to reformation in order to properly reflect the mutual intent of St. Paul and the policy purchaser, HMI Real Estate, regarding the nature and extent of Loss of Income coverage. Specifically, HMI applied for a policy which HMI and/or its representatives knew and expected would be subject to terms, conditions, and

FIRST AMENDED ANSWER (C05-653 RSL) - 3

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1 limitations with respect to the Loss of Income coverage. St. Paul offered and intended to
2 sell and deliver a policy with the terms, conditions, and limitations standard to its Builders
3 Risk policy form, and HMI requested nothing else. Due to a clerical error on St. Paul's
4 part, the intended policy language was omitted from the physical documents, so that now
5 the only reference to Loss Of Income coverage is contained in a Coverage Summary that
6 is, on its face, incomplete.

7 2. Plaintiff's claim is limited and/or barred due to plaintiff's lack of an insurable
8 and/or financial interest all or part of the property involved in the asserted claim.

9 3. Plaintiff's claim is limited and/or barred by the exclusions for "Acts or
10 decisions of people," and "Planning, design, materials, maintenance," found in the
11 "General Rules – Washington" (Form 40767 Rev. 10-98), at page 6.

12 4. Plaintiff's claim is limited and/or barred by the exclusion for "Delay – loss of
13 market" found in the "Contractor's and Owner's Property Protection" (Form 42642 Ed 8-
14 90) at page 4.

15 5. Any amount payable would be subject to applicable limits, sub-limits, and
16 deductibles.

17 6. This suit is barred by the two year contractual suit limitation contained in
18 "General Rules – Washington" (Form 40767 Rev. 10-98), at page 4.

19 7. Plaintiff's breach of policy conditions bars its claim for *Olympic Steamship*
20 attorney fees.

21 8. Dispute over the amount of loss is subject to the arbitration provision found
22 at "General Rules – Washington" (Form 40767 Rev. 10-98), at page 4.

23 **PRAYER**

24 1. Plaintiff's Complaint should be dismissed with prejudice and with costs and
25 attorney fees awarded to defendant.

26 FIRST AMENDED ANSWER (C05-653 RSL) - 4

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ATTORNEYS AT LAW
521 SECOND AVENUE WEST
SEATTLE, WASHINGTON 98119-3927
(206) 223-1688

2. The Court should reform the policy to add the missing language concerning the Loss of Income coverage.

3. The Court should award such further relief as it deems just.

DATED this 19th day of December, 2005.

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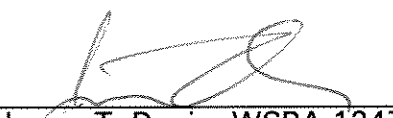
James T. Derrig, WSBA 13471
Attorneys for Defendant
521 Second Avenue West
Seattle, WA 98119-3927
Telephone: (206) 223-1688
Fax: (206) 223-0946
E-mail: jtdservice@erslaw.com

CERTIFICATE OF SERVICE

I hereby certify that on 12/19, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Gregory L. Harper and/or Steven N. Driggers, Attorneys for Plaintiff.

DATED this 19 day of December, 2005.

EKLUND ROCKEY STRATTON



James T. Derrig, WSBA 13471
Attorneys for Defendant
521 Second Avenue West
Seattle, WA 98119-3927
Telephone: (206) 223-1688
Fax: (206) 223-0946
E-mail: jtdservice@erslaw.com

FIRST AMENDED ANSWER (C05-653 RSL) - 5

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